

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MARYLAND
3 SAGENT TECHNOLOGY, INC. :
4 Plaintiff :
5 vs. : Civil Action
6 MICROS SYSTEMS, INC., et al. : No. JFM 02-2505
7 Defendants :

8 -----
9 Deposition of DAN VAN VEELEN, was taken on
10 Thursday, March 6, 2003, at 7031 Columbia Gateway Drive,
11 Columbia, Maryland, commencing at 10:00 a.m., before
12 SUSAN FARRELL SMITH, Notary Public.

13 -----

14 APPEARANCES:

15 MICHAEL H. TOW, ESQUIRE
16 On behalf of the Plaintiff.

17 SCOTT H. PHILLIPS, ESQUIRE
18 On behalf of the Defendants.

19

20 ALSO PRESENT: Peter Rogers

21 REPORTED BY: Susan Farrell Smith

1 order?

2 A I don't know.

3 Q Why did you decide to use this format -- to
4 give it to Micros to use for this particular proposed
5 transaction?

6 A Because of the timeframe needed to get this,
7 the purchase -- the PO completed.

8 Q When was this document prepared?

9 A I don't recall.

10 Q Do you recall when you sent it to Peter Rogers?

11 A I don't recall. Sometime before June 30th.

12 Q And fair to say sometime after June the 6th?

13 A Fair to say.

14 Q But could be anywhere from June 7 to June 29;
15 is that correct?

16 A It would have been sometime after that. After
17 the decision had been made that the prepay was not going
18 to take place.

19 Q When was that decision made?

20 A I don't recall.

21 Q I direct your attention back to Exhibit No. 1,

1 specifically the last two pages of it.

2 A Okay.

3 Q The text here is a little bit different than
4 what we just looked at on S-81; isn't it?

5 A Yes, it is.

6 Q There is a different bill to and ship to
7 address indicated?

8 A Yes, there is.

9 Q There is a reference in this, on this piece of
10 paper to USI where there is no such reference on S-81;
11 is that correct?

12 A Correct.

13 Q Turning over to the next page behind that one,
14 there is a document with a Sagent logo on it and
15 Exhibit A near the top. Take a look in the table
16 section, there is a column labeled Sagent product and
17 the product description, license fees, quantity and
18 total. Looks to be a license fee of a hundred and fifty
19 thousand dollars for the Sagent Data Mart Solution which
20 comprises various items, one quantity for extended price
21 of a hundred and fifty thousand. And Analytical

1 Calculator of ten thousand dollars, and my math is much
2 better than this, but I don't add one hundred fifty
3 thousand to ten thousand and get a hundred and twelve.
4 Can you explain that one?

5 A Some sort of error. There is a discount figure
6 missing.

7 Q So, it was supposed to be a hundred and twelve
8 and not a hundred and sixty?

9 A The extended price was to be a hundred and
10 twelve.

11 Q There is a line item for annual maintenance and
12 support for twenty-four thousand dollars. If Micros was
13 putting this license at USI, to whom would support have
14 been provided?

15 A To whom would support have been provided?

16 Q Yes.

17 A Support would have been provided to Micros.

18 Q Just below the table there is a line that says
19 annual maintenance and support terms and conditions, see
20 attached support agreement. To your knowledge, was a
21 support agreement attached to this document back in June

1 of 2000?

2 A I don't recall.

3 Q Has a support agreement -- has that -- have you
4 ever seen the support agreement that may have been
5 attached to this document?

6 A If a -- if a maintenance and support agreement
7 had been attached, it would have been our standard
8 support and maintenance agreement.

9 Q You don't know whether one was ever attached to
10 this particular document?

11 A I don't know.

12 Q Doubling back to Exhibit No. 7, you see
13 attached to that a multi page end user license agreement
14 containing a number of what I presume are standard
15 Sagent terms and conditions of licenses. At least at
16 the time. Why was that agreement not part of this
17 June 30 exchange?

18 A Because this is two different deals.

19 Q Please explain.

20 A Well, if you look back on Page 5 of the
21 agreement, there is a listing of fifty quantity for the

1 USI hosting solution. And if you look at the June 30
2 transaction, it's not in here.

3 Q The form of agreement leaving off the specifics
4 of fifty licenses in the June 7th document, is that a
5 standard form of license agreement for end users of
6 Sagent products?

7 A Are you asking me if this is our standard
8 software end user license agreement?

9 Q At the time?

10 A At the time, yes, it is. Yes, it was.

11 Q Would that be used routinely in software
12 licensing transactions between Sagent and end users?

13 A With new customers, yes.

14 Q Would you -- would you use it only with new
15 customers or also with existing customers?

16 A Existing customers would have an agreement in
17 place.

18 Q And if an existing customer elected to license
19 additional software, would there be a separate licensing
20 agreement? Or how would it be handled?

21 A The additional software would be added to on

1 the terms of the original agreement as an additional
2 exhibit. So, Exhibit A, Exhibit B, Exhibit C and so
3 forth.

4 Q And each attached to a standard -- at the time?

5 A That's typically how it was done.

6 Q Did Micros have a license agreement with Sagent
7 to which the June 30 transaction was going to be
8 attached?

9 A I don't know.

10 Q Taking a look back at the, taking the -- back
11 at these documents we see the second page has Exhibit A
12 at the top. Is that an Exhibit A of the type that would
13 be attached to a software license agreement as an
14 attachment?

15 A Typically the information would be included in
16 the file, but the actual data would be added to the back
17 of the contract.

18 Q You don't know whether Micros had an end user
19 license agreement?

20 A I wasn't involved in the original relationship
21 with Micros; so, I can't -- I don't know. I would

1 assume so, because I wasn't asked to obtain one.

2 Q You had the Micros account for about two years
3 before this June 2000 meeting?

4 A No.

5 Q When did you first start interacting with the
6 Micros account?

7 A In about October of '99.

8 Q And during that approximately eight month
9 period, you never had occasion to see the contract that
10 Sagent had with Micros?

11 A The contracts were being handled by Matt
12 Comstock. So, no. He had managed the relationship up
13 until that point.

14 Q And you took over for Matt Comstock?

15 A I didn't take over for Matt Comstock. I took
16 over in addition to Matt Comstock. Matt would maintain
17 the services side and I would maintain the software
18 side.

19 Q In the course of maintaining the software side,
20 you did not have occasion to see the license agreement
21 between Micros and Sagent?

1 A No.

2 Q And it is your understanding that this single
3 license was being acquired for use in connection with
4 the InSight data warehouse project at USI; is that
5 correct?

6 A Yes.

7 Q When you received this document, did you
8 prepare a document, did you prepare a sales order form?

9 A I don't recall.

10 Q Would you ordinarily have prepared a sales
11 order form of this nature in response to receipt of a
12 purchase order?

13 A In most cases yes. There were times that a
14 sales order was not prepared.

15 Q What would -- what circumstances would lead to
16 a sales order not being prepared?

17 A Time. Having enough time. So, if I recall
18 correctly, this particular order was faxed to me I
19 believe on the 30th, I believe late in the day. And it
20 was sent immediately to our Mountain View office without
21 a sales order being attached. It's common practice at

1 the end of a quarter.

2 Q And was that treated as a revenue recognizable
3 transaction effective on June 30, 2000?

4 A Yes, it was.

5 Q Is that consistent with Sagent's general
6 policies on recognizing revenue for software licensing
7 transactions?

8 A Is what consistent?

9 Q Is the decision to treat this as a revenue
10 recognizable transaction on June 30, 2000 consistent
11 with Sagent's general policies and practices for
12 treating software licensing agreements as revenue
13 recognizable transactions?

14 A As far as I know.

15 (Whereupon Deposition Exhibit No. 9 was
16 marked.)

17 A Okay.

18 Q This exhibit purports to be an e-mail sent, a
19 printout of a e-mail sent from Scott Callnin to you
20 around February 8th, 2001, which is some seven months
21 after the June 30 exchange of documents. Is that

1 correct?

2 A That's correct.

3 Q In the second paragraph Scott states that you
4 and -- Mr. Van Veelen and Peter Rogers had agreed to
5 allow the software to be an asset on our shelf for some
6 of the next full-install projects. Do you recall ever
7 making such an agreement?

8 A No.

9 Q Did you ever advise Mr. Callnin that that was
10 not your recollection, not your understanding of the
11 arrangement?

12 A Not that I recall.

13 Q What was -- and your understanding was that the
14 software license was for use at USI and for no other
15 purpose?

16 A My understanding was that it was for the use at
17 USI.

18 Q A little bit further above Scott states his,
19 referring to Peter Rogers, intention at that time was
20 two-fold, the third and fourth line down, to get the ASP
21 rolling as well as to help Sagent as best we could at

1 InSight which we accommodated.

2 (Whereupon Deposition Exhibit No. 10 was
3 marked.)

4 Q On Page 2 of Bates No. S-20 of this Exhibit 10,
5 this appears to contain your response to the e-mail that
6 we looked at in Exhibit 9 from Scott Callnin to you.
7 And you write, there is no problem with reissuing the
8 software licenses to reflect two Data Load, one
9 Analytical Calculator, maintenance to begin with the
10 next sale. Which next sale were you referring to?

11 A In the previous e-mail Scott had let me know
12 that the USI InSight development had gone by the
13 wayside. So, Scott had requested that we accommodate
14 some requests in dealing with the licenses that they had
15 acquired. So, we were trying to be accommodating to
16 them and the next sale would have been whichever InSight
17 product got sold next. So, in support of that sale.

18 Q So, this -- would it be correct that this is
19 taking the license that may have originally been
20 intended to be used in conjunction with the USI effort
21 to provide it directly to an end user as part of an

1 InSight installation?

2 A That's correct, and we would not charge them
3 for that transaction.

4 Q By February 8th, 2001 had the CD rom containing
5 the software described in the June 30 documents already
6 been delivered?

7 A I'm not sure I understand which CD rom you're
8 talking about.

9 Q Better question. The June 30 document --
10 document discussed providing a license to Micros for
11 certain software?

12 A Yes.

13 Q How was that software delivered to Micros?

14 A Delivered via CD rom and software package. So,
15 in boxes with packaging, with user guides, things like
16 that.

17 Q When was that delivered?

18 A It would have been shipped that day.

19 Q June 30th?

20 A June 30th.

21 Q From California?

1 A Yes. Via Fed Ex is typically -- or UPS,
2 whatever was the vendor of choice at that time.

3 Q So, it would have arrived sometime on a
4 business day in the following week?

5 A Presumably.

6 Q Okay. In your February 8th e-mail, you discuss
7 reissuing the software licenses. By agreeing to that
8 would that require the delivery of an additional CD rom?

9 A No.

10 Q Why not?

11 A Because in reallocating the license they
12 already owned, we would not be recognizing any
13 additional revenue.

14 Q Did they already have on the CD rom that had
15 been delivered back in June/July of '00 this software as
16 well as the software described in the June 30 documents?

17 A Yes.

18 Q It was all on the same CD?

19 A Yes.

20 Q Is there any way to tell whether the CD roms
21 that you -- that Sagent delivers have been used?